

2007 DRAFTING REQUEST

Bill

Received: **09/21/2006**

Received By: **rryan**

Wanted: **As time permits**

Identical to LRB:

For: **Donald Friske (608) 266-7694**

By/Representing: **Tim Gary**

This file may be shown to any legislator: **NO**

Drafter: **rryan**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Friske@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Resisting arrest while armed

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/1	rryan 11/16/2006	kfollett 12/07/2006	rschluet 12/08/2006	_____	sbasford 12/08/2006	sbasford 02/16/2007	

FE Sent For:

<END>

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1/?	rryan	11/16/06 12/17	 12/16/06				
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FE Sent For:

<END>

Ryan, Robin

From: Parisi, Lori
Sent: Monday, September 18, 2006 3:29 PM
To: Ryan, Robin
Subject: FW: Message for Robin Ryan

Attachments: Picture (Metafile)

From: Gary, Tim
Sent: Monday, September 18, 2006 2:39 PM
To: LRB.Legal
Subject: Message for Robin Ryan


Rep. Friske respectfully request LRB draft a bill, at its earliest convenience, that will solve the following problem:

State statutes specify a person can be charged with a felony if all of the following apply:

1. Person refuses to comply with a law enforcement officer's attempt to take them into custody
2. Person retreats or remains in a building or place and through action or threat attempts to prevent the officer from taking him or her into custody
3. While acting under both 1 and 2, the person remains or becomes armed with a dangerous weapon or threatens to use a dangerous weapon regardless of whether he or she has a dangerous weapon

The Lincoln County District Attorney had a case where a man, armed with a loaded rifle, was toying with police by backing away into the shadows each time a certain officer would approach and try talking him into surrendering. The DA charged him with a felony under State Statute 946.145 but the judge reduced it to a misdemeanor because the man returned to the lighted area after backing away, when the officer would back away. The judge said that did not constitute "retreating."

Should retreating be defined in order to avoid such decisions? Is there a reference to what a "retreat" is elsewhere in the statutes we can insert here? Blacks Legal Dictionary has no definition of retreat, but I have found a definition in Merriam Webster's collegiate dictionary:

Main Entry: 're-treat 

Pronunciation: ri-'trEt

Function: *noun*

Etymology: Middle English *retret*, from Anglo-French *retrait*, from past participle of *retraire* to withdraw, from Latin *retrahere*, from *re-* + *trahere* to draw

1 a (1) : an act or process of withdrawing especially from what is difficult, dangerous, or disagreeable (2) : the process of receding from a position or state attained <the *retreat* of a glacier> **b** (1) : the usually forced withdrawal of troops from an enemy or from an advanced position (2) : a signal for retreating **c** (1) : a signal given by bugle at the beginning of a military flag-lowering ceremony (2) : a military flag-lowering ceremony

2 : a place of privacy or safety : **REFUGE**

3 : a period of group withdrawal for prayer, meditation, study, or instruction under a director <a spiritual *retreat*> <a corporate *retreat*>

Please feel free to call or email me if you have any questions.

Tim Gary
Research Assistant for
Representative Donald R Friske

Ryan, Robin

From: Ryan, Robin
Sent: Thursday, November 02, 2006 11:36 AM
To: Gary, Tim
Subject: bill request on failure to comply with officer's attempt to take into custody

Hi Tim,

I am working on your request to modify s. 946.415 (failure to comply with officer's attempt to take a person into custody). I have two alternatives for you to review:

1. The first option is to clarify the retreat language. First, I would provide that it means to withdraw to a building or place, not just to retreat, which could mean taking a few steps away from the officer. Second, I could modify retreat to cover both a temporary or more extended retreat or withdrawal.
2. The second option is to eliminate the "retreat or remaining in place" portion of paragraph (b) so it reads as follows:
(b) Through action or threat attempts to prevent the officer from taking him or her into custody.

I think the main purpose of 946.415 is to provide a greater penalty for resisting arrest when the person is armed. (Resisting is a misdemeanor under s. 946.41 and a felony under 946.415). However, the author of the crime (Rep. Owens) may also have had a second purpose -- to limit the greater penalty to situations in which the person holes up in some place. I don't think current statute accomplishes the second purpose because retreat is vague. As I stated above, it could just mean taking a few steps away from the officer.

Section 946.415 was enacted in 1995 in response to a request from the Winnebago County DA who wanted a higher penalty for persons who resisted arrest by barricading themselves in their residences while armed. DOJ wrote a memo to the bill author suggesting that she remove the "retreat or remain in a building or place" because it is unnecessary.

In sum, the primary question for you is whether you want to require as an element of s. 946.415 that the person withdraw to or remain in some place while resisting arrest.

Robin Ryan

605

MAY 22 '95 02:19 PM WL DEPT OF JUSTICE

P.2/2

CORRESPONDENCE/MEMORANDUM

DEPARTMENT OF JUSTICE

Date: April 17, 1995

To: Carol Owens
State RepresentativeFrom: Andrew Cohr.
Executive Assistant← 6-1221 → Question

Subject: 1995 Assembly Bill 276

The Legislative Committee of the Department of Justice has reviewed 1995 A.B. 276 for which you are the primary sponsor. We agree with the concept behind the bill but believe that it could be improved.

Specifically, we believe that the primary motivation behind your bill appears to have been a desire to increase the potential penalty for resisting arrest when such activity is accompanied by using, or threatening to use, a dangerous weapon. We agree that that activity should be elevated to felony level. We believe, however, that the additional element requiring that the defendant must retreat to, or remain in, a building or place is entirely unnecessary. Further, we believe that the language in proposed subsection (2)(c) could give rise to problems that could easily be remedied by simply substituting language such as "uses or threatens to use a dangerous weapon." Finally 1995 A.B. 276 in its present form fails to contain any language preconditioning the police officers conduct on being "lawful." We note that both sections 946.40 and 946.41 contain this precondition.

Accordingly, we believe that concept behind 1995 A.B. 276 could be better accomplished through an amendment to present section 946.41, restricting or obstructing officer. We would, therefore, recommend and support a substitute amendment containing language substantially as follows: "Section 946.41(2g) of the statutes is created to read: (2g) Whoever intentionally uses or threatens to use a dangerous weapon while refusing to comply with an officer's lawful attempt to take him or her into custody is guilty of a Class E felony."

We will be happy to answer any questions you may have regarding our proposed changes.

AC:dt

From drafting file for 1995 Act
93

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

11/14/06

LRB-0328

mtg. w/ Rep. Fiske, Tim Gany

Doesn't want to broaden
application of crimeApparently SA who contacted Rep
Fiske suggested amending
946.415 (2)(c) to require that
person need only be acting under
par. (a) or (b) instead of
(a) & (b)OK to remove "retreat or
remain in bldg/place" - Fiske
may return to SA's suggestionSend Rep. Fiske a copy
of DOJ memo from '95 Act
file



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-0328/2

RLR: [initials]

In 11/16/06

RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: resisting arrest while armed.

or
with or
threatening to
use a
dangerous
weapon

Analysis by the Legislative Reference Bureau

Under current law, a person who knowingly resists a law enforcement officer while the officer is acting in his or her official capacity and with lawful authority is guilty of a Class A misdemeanor. Resisting arrest while armed or threatening to use a dangerous weapon and retreating or remaining in a building or place is a Class I felony. Specifically, a person commits a Class I felony if all of the following conditions are satisfied: 1) the person refuses to comply with a law enforcement officer's lawful attempt to take the person into custody; 2) the person retreats or remains in a building or place; 3) the person, through action or threat, attempts to prevent the officer from taking him or her into custody; and 4) the person is armed with or threatens to use a dangerous weapon. (A description of penalties is provided below.)

This bill eliminates the condition that a person must retreat or remain in a building or place to be convicted of a Class I felony for resisting arrest while armed with or threatening to use a dangerous weapon. Also, the bill eliminates the condition for the crime that a person must refuse to comply with the officer's lawful attempt to take the person into custody, but retains the condition that the person, through action or threat, attempt to prevent the officer from taking the person into custody.

For a Class A misdemeanor, a person may be fined not more than \$10,000, confined for up to nine months, or both fined and confined. For a Class I felony, a person may be fined not more than \$10,000; sentenced to a term of imprisonment,

consisting of a term of confinement followed by a term of extended supervision, that together may not exceed three and one-half years; or both fined and imprisoned.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 946.415 (title) of the statutes is repealed and recreated to read:

2 **946.415(title) Resisting arrest while armed with or threatening to use**
3 **a weapon.**

4 SECTION 2. 946.415 (2) (a) of the statutes is repealed.

5 SECTION 3. 946.415 (2) (b) and (c) of the statutes are amended to read:

6 946.415 (2) (b) ~~Retreats or remains in a building or place and, through~~ Through
7 action or threat, attempts to prevent the an officer from lawfully taking him or her
8 into custody.

History: 1995 a. 93; 2001 a. 109.

9 (c) While acting under ~~pars. (a) and~~ par. (b), remains or becomes armed with
10 a dangerous weapon or threatens to use a dangerous weapon regardless of whether
11 he or she has a dangerous weapon.

History: 1995 a. 93; 2001 a. 109.

(END)

Basford, Sarah

From: Gary, Tim
Sent: Friday, February 16, 2007 10:58 AM
To: LRB.Legal
Subject: Draft Review: LRB 07-0328/1 Topic: Resisting arrest while armed

Please Jacket LRB 07-0328/1 for the ASSEMBLY.